

DEPARTMENT OF EDUCATION  
FACILITIES DEVELOPMENT BRANCH

**Contract No. C1000538**

AWARDED PURSUANT TO  
§103D-304, HAWAII REVISED STATUTES ("HRS")  
& SECTION 3-122, HAWAII ADMINISTRATIVE RULES ("HAR").

PROFESSIONAL SERVICES

PROJECT No. PS D013-501

WITH

**JACOBS PROJECT MANAGEMENT CO.**

TO PROVIDE

ARCHITECTURAL AND ENGINEERING SERVICES

FOR

FACILITIES MASTER PLAN – SYSTEM-WIDE

FOR THE HAWAII DEPARTMENT OF EDUCATION

(DOE JOB NO. Q61004-13)

PC: KM

**STATE OF HAWAII**  
**CONTRACT FOR PROFESSIONAL SERVICES**

This Contract, executed on the respective dates indicated below, is effective upon issuance of a Notice to Proceed, between the DEPARTMENT OF EDUCATION, State of Hawaii ("STATE"), by its SUPERINTENDENT (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is 1390 Miller Street, Honolulu, Hawaii 96813 and JACOBS PROJECT MANAGEMENT CO. \_\_\_\_\_ ("CONTRACTOR"), a corporation insert "corporation", "partnership", "joint venture", "sole proprietorship", or other legal form of the Contractor under the laws of the State of Delaware, whose business address and taxpayer identification number are as follows: 3161 Michelson Drive, Suite 500, Irvine California 92612, Federal Employee ID No. 35-2321289, Hawaii G.E.T. License No. W79748056-01. \_\_\_\_\_

**RECITALS**

A. The STATE desires to retain and engage the CONTRACTOR to provide the services described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said services.

B. This Contract is for professional services as defined in section 103D-104, Hawaii Revised Statutes ("HRS").

C. Money is available to fund this Contract pursuant to:

(1) Act 164/SLH 2011, G-13, Act 106/SLH 2012, G-1 & G-13, Act 134/SLH 2013, G-3  
(Identify state sources)  
or (2) \_\_\_\_\_  
(Identify federal sources)

or both, in the following amounts:      State      \$ 4,615,000.00  
    Federal      \$ -----

D. Pursuant to §103D and §302A-1111, HRS, the State is authorized to  
*(Legal authority to enter into this contract)*  
enter into this contract.

NOW, THEREFORE, in consideration of the promises contained in this Contract,  
the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory  
manner as determined by the STATE, provide all the services set forth in Attachment-S1, which  
is made a part of this Contract.

2. Term of Contract. This Contract starts upon issuance of a Notice to Proceed  
and ends upon completion of construction with 0 option(s) to extend for  
(insert no. of options)  
0 each.  
(insert no. of mos. or yrs.)

3. Compensation. The CONTRACTOR shall be compensated for services  
rendered and costs incurred under this Contract for a total amount not to exceed FOUR  
MILLION SIX HUNDRED FIFTEEN THOUSAND AND 00/100--- DOLLARS (\$4,615,000.00),  
including approved costs incurred and taxes, according to the Compensation and Payment  
Schedule set forth in Attachment-S2, which is made a part of this Contract.

4. Time of Performance. The services or goods required of the CONTRACTOR  
under this Contract shall be performed and completed in accordance with the Time of  
Performance set forth in Attachment-S3, which is made a part of this Contract.

5. Standards of Conduct Declaration. The Standards of Conduct Declaration by the  
CONTRACTOR is attached hereto and made a part of this Contract.

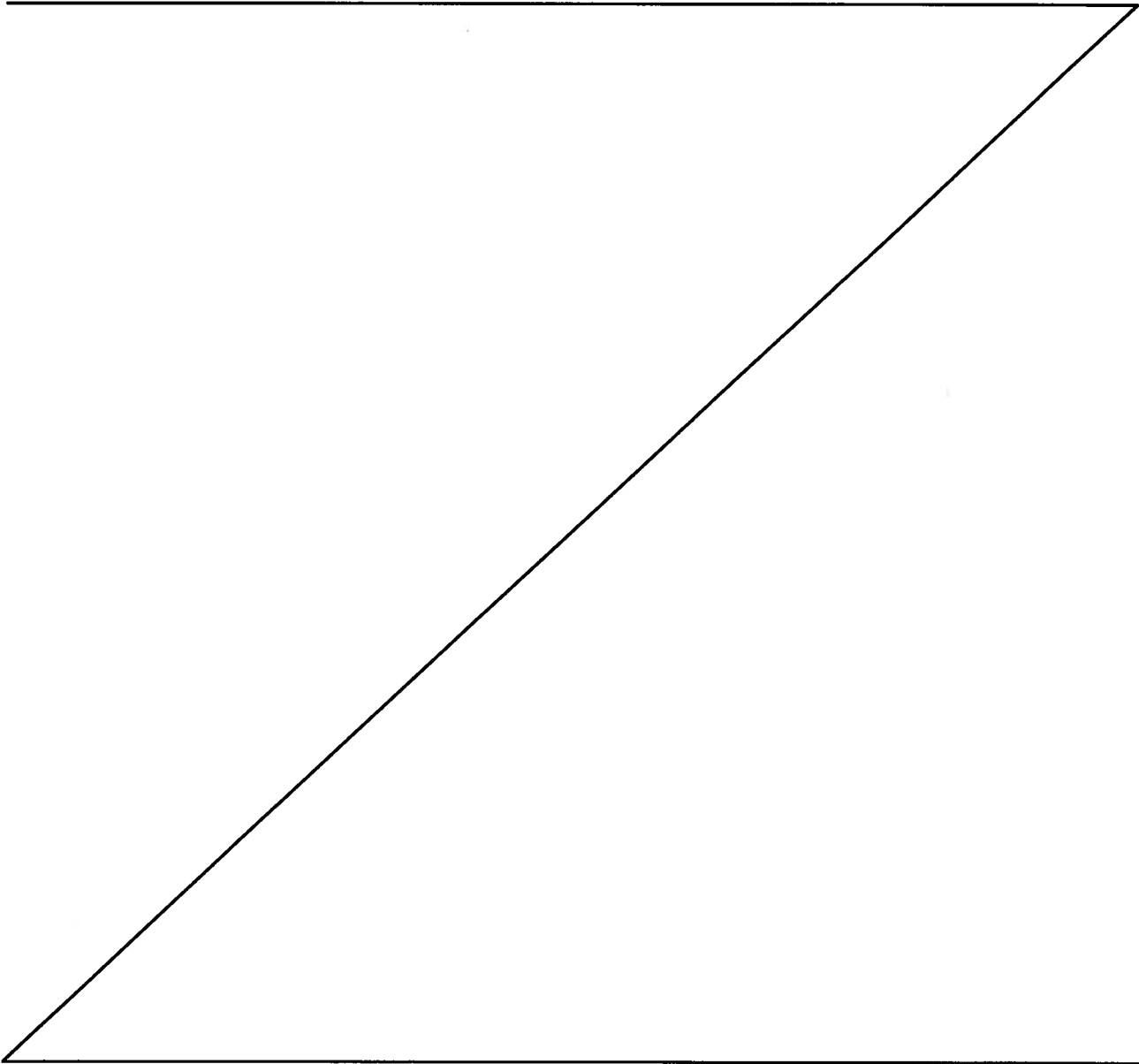
6. Other Terms and Conditions. The General Conditions and any Special  
Conditions are attached hereto and made a part of this Contract. In the event of a conflict  
between the General Conditions and the Special Conditions, the Special Conditions shall  
control.

7. Liquidated Damages. Liquidated damages shall be assessed in the  
amount of not applicable DOLLARS

(\$ n/a) per day, in accordance with paragraph 9 of the General Conditions.

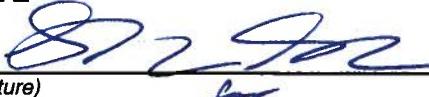
8. **Notices.** Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address as indicated in this Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

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IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures,  
on the dates below:

**STATE**

  
(Signature)

KATHRYN S. MATAYOSHI  
(Print Name)

SUPERINTENDENT OF EDUCATION  
(Print Title)

MAR 21 2014

(Date)

CORPORATE SEAL  
(If available)

**CONTRACTOR**

JACOBS PROJECT MANAGEMENT CO.  
(Name of Contractor)

  
(Signature)

ISSAM M. KHALAF  
(Print Name)

VP, REGIONAL MANAGER  
(Print Title)

3-17-14

(Date)

APPROVED AS TO FORM:

Tam E. Russell  
Deputy Attorney General

\*Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.

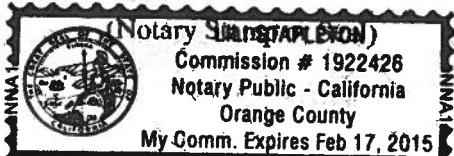


STATE OF HAWAII

**CONTRACTOR'S ACKNOWLEDGMENT**

STATE OF California,  
County of Orange)  
) SS.

On this 17 day of March, 2014 before me appeared  
Issam Khalaf and —, to me  
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are  
Vice President and of  
Jacobs Project Management Co, the  
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said  
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said  
instrument as the free act and deed of the CONTRACTOR.



Lili Stapleton  
(Signature)  
Lili Stapleton  
(Print Name)

Notary Public, State of California  
My commission expires: Feb 17, 2015

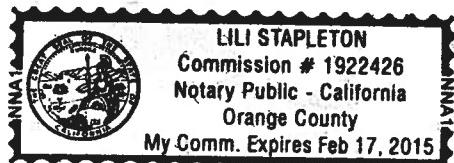
Doc. Date: Mar 17, 2014 # Pages: 35

Notary Name: Lili Stapleton Circuit

Doc. Description: State of Hawaii  
Dept of Education, Revised  
Status, Contract # C1000538

(Notary Stamp or Seal)

Lili Stapleton 3-17-14  
Notary Signature Date  
NOTARY CERTIFICATION





**STATE OF HAWAII**  
**CONTRACTOR'S**  
**STANDARDS OF CONDUCT DECLARATION**

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of JACOBS PROJECT MANAGEMENT CO., CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR  is\*  is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

**CONTRACTOR**

By

R  
(Signature)

Print Name ISSAM M. KHALAF

Print Title VP, REGIONAL MANAGER

Name of Contractor

JACOBS PROJECT MANAGEMENT CO.

Date 3-17-14

# JACOBS™

155 N. Lake Avenue  
Pasadena, CA 91101  
626-578-3500

## CERTIFICATE OF AUTHORITY

I, Michael S. Udovic, do hereby certify that I am the Secretary of Jacobs Project Management Co., a corporation duly organized under the laws of the State of Delaware, in the United States of America (the "Company"). I do further certify that Issam M. Khalaf is a Vice President of the Company and is duly authorized by the By-Laws, Certificate of Incorporation, general resolutions and other authority of the Company to enter into Client Contracts on behalf of the Company or any of its subsidiaries pursuant to the attached resolutions. I further certify that such authority has not been repealed, rescinded or amended. I do further certify that the By-Laws have not been amended and remain in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and attached the Corporate Seal of the Company on this 17<sup>th</sup> day of March 2014.



Michael S. Udovic  
Secretary

SEAL

**Delegation of Authority – Client Contracts**

WHEREAS, in the ordinary course of business the Company enters into contracts with customers with respect to, among other things, the provision of professional services by the Company to such clients ("Client Contracts"); and

WHEREAS, the Board deems it to be desirable and in the best interests of the Company to formalize the delegation of certain power and authority to enter into Client Contracts on behalf of the Company or any of its subsidiaries to any officer of the Company with the title of President, Chief Executive Officer, or Vice President (collectively, the "Designated Officers") or to the delegates of a Designated Officer.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby delegates to the Designated Officers the full power and authority to authorize, approve and enter into Client Contracts, in the name of, for and on behalf of the Company or any of its subsidiaries, and that such delegation of authority be and hereby is, authorized and approved in all respects;

RESOLVED FURTHER, that each of the Designated Officers be and hereby is, authorized and empowered in the name of, for and on behalf of the Company or any of its subsidiaries, to execute, certify, file and record such additional agreements, documents and instruments as may be or become reasonably necessary or desirable in the judgment of such Designated Officers to carry out the purposes of the foregoing resolutions;

RESOLVED FURTHER, that the Board hereby authorizes and approves the power and authority of each Designated Officer to further delegate the power and authority delegated thereto in the foregoing resolutions to employees of the Company who are not Designated Officers;

RESOLVED FURTHER, that each Designated Officer shall provide to the Board such information as requested by the Board from time to time regarding the actions taken by the Designated Officers in respect of the matter for which authority has been delegated hereunder; and

RESOLVED, FURTHER, that all acts and deeds heretofore done by any Designated Officers for and on behalf of the Company or any of its subsidiaries in entering into, executing, acknowledging or attesting to any such contracts in the ordinary course of business or in carrying out the terms and intentions of these resolutions are hereby ratified, approved and confirmed.

**STATE OF HAWAII**  
**SCOPE OF SERVICES**

**PROJECT: FACILITIES MASTER PLAN – SYSTEM-WIDE**

**FOR THE HAWAII DEPARTMENT OF EDUCATION**

**D.O.E. Job No. Q61004-13**

The CONTRACTOR agrees to perform professional services for the Project in accordance with the following:

A. The terms and conditions of the Agreement.

B. PROGRAM REQUIREMENTS:

1. **GENERAL DESCRIPTION:**

- a. The CONTRACTOR shall provide the Department of Education, State of Hawaii, with planning services for the development and execution of a system-wide Facilities Master Plan.
- b. The manual entitled Policies and Procedures Governing Design Consultant Contracts (PPGDCC), dated November 1981, as revised, not physically attached hereto but hereby made a part of this Agreement to the extent that such requirements are not inconsistent with the terms and conditions of this Agreement. See Appendix "A" dated January 1999 for revisions to said manual. Upon request, said document/manual/etc. is available for viewing at Facilities Development Branch, Project Management Section, Kalanimoku Building, 1151 Punchbowl Street, Room 431.
- c. All facilities and site and utility improvements shall be designed to comply with DOE guide specifications; the American with Disabilities Act Accessibilities Guidelines, as adopted by Hawaii Revised Statutes (HRS) 130-50; the State of Hawaii Department of Health, the National Electrical Code and any other applicable codes; the current versions of the International Building Code, as amended and adopted by the appropriate County and any amended requirements as adopted by the appropriate County and/or the State.

2. **DETAILED DESCRIPTION:**

The CONTRACTOR shall work in consultation with the Contract Manager (i.e. Hawaii State Department of Education - DOE) to create a "Facilities Master Plan." The Facilities Master Plan shall serve as a cohesive planning instrument for the future restoration and development of Hawaii public schools. The project shall be divided into the following phases and services:

**a. PHASE I**

**1.1 Preliminary Planning:** CONTRACTOR to gather all relevant project information and data, to include previous planning studies, floor plans, available CAD documentation, maintenance records, educational specifications (DOE Ed Spec), school evacuation plans, teacher rosters, etc. for evaluation, translation, and input into provided Capital Planning software (M.A.P.P.S.<sup>TM</sup> to be employed to execute assessment), this process entails the development of an organization hierarchy and form packages for each facility to be assessed.

**1.2 Planning and Policy Research:** CONTRACTOR to provide up to eight (8) research "white papers" addressing major elements of capital planning. Research to include: overview of select issues, executive summary & talking points, an appendix with recommendations for additional study, and recommendations. Preliminarily topics identified in priority order include:

- 21st Century Schools
- Hawai'i DOE Educational Specifications Review
- Sustainability in Schools
- Pre-Kindergarten Initiatives Impact
- Land Use Regulatory Impacts
- Energy Consumption and Net-Zero
- Public Private Partnership Market Opportunities
- Current School Construction Cost Analysis (including soft costs)
- Analysis of Regional Development Hot-Spots
- Capital Construction Funding Structures & Strategies
- Development Impact Fee Analysis
- Transportable/Portable Facilities / Temporary Building Use

**1.3 Standards Development / Educational Specifications and Guidelines:** CONTRACTOR to develop a standards-based approach to facilities assessment to ensure objective and credible findings. Standards to be based on DOE stakeholder input, current DOE Ed Spec, national best practices for educational facilities, and 21st Century instructional trends from leading K-12 school districts throughout the United States. CONTRACTOR shall lead DOE personnel in the establishment of educational adequacy standards for incorporation into a comprehensive educational adequacy survey. These standards are to include (but not be limited to) assessment components, priorities and weightings, square footage parameters, and a detailed quantification of elements of instructional spaces. The standards shall also include area programs and target enrollments for each school type. Component areas to be evaluated include:

- Capacity
- Support for Programs
- Equity
- Technology
- Supervision
- Instructional Aids
- Physical Characteristics
- Learning Environment
- Relationship of Spaces

**1.4 CAD Conversion and Space Inventory:** CONTRACTOR to execute CAD plan conversion and space inventory task (from existing CAD files). Source plans to be utilized to recreate CAD floor plans depicting the location of building components such as walls, doors, and windows and site plans with existing buildings. These plans will be schematic representations that are to be verified during initial facility walk-throughs to identify where source plans differ significantly from actual conditions. Resulting mark-ups will be incorporated into the CAD file so that accurate plans of each school building and school site are captured. Final plans will be linked to software database (M.A.P.P.S™) such that, room inventories are linked to corresponding spaces on plans to support square footage area calculation for storage in the assessment database. Information about the space such as room number, and use, will be conveyed to the drawing and displayed through specialized routines programmed into the software (M.A.P.P.S™) application. The end result will include a link between the spatial data within the drawings and the functional data associated with the rooms themselves. An accurate inventory of spaces within each facility will then be produced. The information obtained from the field verification, and resulting space inventory calculations, will be used during the Building Condition Assessment (per item 1.7) to refine the depiction of areas for cost estimating.

**1.5 Pilot Assessment:** CONTRACTOR to fast-track facilities assessments for up to eight (8) schools as a pilot for the overall Facility Master Plan. These pilot assessments will include early policy and planning support, CAD conversion and space inventory for each school to be assessed, a space inventory, educational adequacy survey, and capacity and utilization analysis. Additionally, each campus will have a comprehensive Building Condition Assessment (per item 1.7) completed with a life cycle forecast and summary level reporting. These pilot assessments will be used to calibrate future assessment efforts and provide an initial evaluation of DOE facilities across the statewide inventory.

**1.6 Educational Adequacy Assessment:** CONTRACTOR to survey the Educational Adequacy (EA) of 75% school facilities by comparing inventoried facility components to standards developed and adopted through the DOE Ed Specs, standards and guidelines as described in item 1.3. Educational adequacy surveyor teams will collect information on instructional spaces and school attributes at site, building, and room level for comparison to the standards prepared in conjunction with DOE stakeholders. The items that are correctable within normal repairs or renovations will be incorporated into the condition assessment database with associated costs and will reflect additional requirements over and above what is discovered by the condition assessment staff.

**1.7 Building Condition Assessment:** CONTRACTOR will perform a Building Condition Assessment (BCA) of 67% of school facilities. These assessments will be conducted by as many as six assessment teams with as many as three assessors per team; one assessor will focus on architectural systems, one will focus on electrical systems, and the other on mechanical and plumbing systems. Additionally, a civil/structural assessor will focus on site items as required. The assessments will address building systems and identify current and near-term deficiencies. In addition, the assessors will collect life-cycle data related to the fixed equipment inventory to project capital replacement requirements over the next ten years.

Building Condition Assessment levels will be established for school facilities based on the building date of construction provided by the DOE. Building Condition Assessment forms will be used to document both current deficiencies and life-cycle data at both site and building levels. CONTRACTOR will coordinate with STATE personnel to obtain existing assessment data prior to field assessments. CONTRACTOR will input deficiencies and life-cycle data identified by the assessment team into the assessment and capital planning software (M.A.P.P.S™) database. CONTRACTOR will also prepare updated replacement and soft cost models for use in calculating the total deficiency budget and for calculating the Facility Condition Index (FCI) for each building and campus assessed.

**1.8 Enrollment Evaluation and GIS:** CONTRACTOR will collect, review, and analyze demographic data for statewide school system, including an overview of each school district, population trends and projections, birth counts, migration patterns, and a review of previous projections. Additionally, information from the state, city, county, and/or township agencies, as well as the US Census will be evaluated. CONTRACTOR will utilize current Geographic Information System [GIS] to organize data regarding schools, students, development patterns, and student attendance boundaries. GIS graphically conveys information regarding locations of schools, where students live, and other layers of data to assist in the decision-making process. Breakdowns by age, neighborhood, socio-economic, ethnicity, language and gender will be provided (to the extent data is available).

Data collection process will include:

- Collecting data from the District, city, township, county and federal sources, including student databases, attendance boundaries, geographic layers, ortho-photography, historical housing development, street centerlines, water, and other identified factors, as available.
- Converting current student databases into GIS format by a process called geocoding. This process will "address match" all students in the District
- Arranging data and ensuring it is in a compatible and like coordinate system, so information is accurately portrayed in the area
- Appending other relevant information to databases for ease of analysis in further planning stages

Enrollment for each elementary school and secondary school will be analyzed to depict:

- Students who live and attend in boundary
- Students who live in but attend out of boundary
- Students who live out but attend in boundary

Population and housing demographics from the US Census and local sources will be analyzed to determine trends in different areas of the district. Analysis of these trends will assist the decision-making process regarding future facilities and locations of programs.

Maps will be produced to illustrate:

- Current attendance boundaries

- Where students live in relation to the boundaries
- Distribution of students with identified attributes in relation to the boundaries

CONTRACTOR will develop and analyze documents, including (but not limited to) the following:

- School Attendance Maps
- Census Block Group Maps, identifying population characteristics and Projections
- Other documents, as identified

After compiling the GIS into an overall planning tool, CONTRACTOR will review Hawaii developed enrollment projections. Based on that review, the team will provide commentary on the projection process and make recommendations as applicable to refine school-by-school projections. Assuming no additional analysis is required, the relevant projections will be used as a basis for capacity and utilization calculations.

**b. PHASE II**

**2.1 Policy Research (Continued):** CONTRACTOR to provide up to four (4) additional research “white papers” addressing major elements of capital planning (per item 1.2).

**2.2 Standards Development/ Educational Specifications and Guidelines (Continued):** CONTRACTOR shall assemble a representative group of stakeholders to conduct a series of work sessions to review and revise standards (per item 1.3). CONTRACTOR will conduct work sessions across the seven (7) Hawaii school districts to further develop and review standards. Work sessions will include one-on-one, and small group, discussions among stakeholders to consider such educational topics as curriculum, special education, art, music, athletics, safety and security, technology, library skills, and career and technology education, etc. The end product will serve to establish a web-based educational specification intended to bridge current standards to a 21st Century learning environment.

**2.3 Educational Adequacy Assessment (Continued):** CONTRACTOR to survey the Educational Adequacy (EA) of the balance of all school facilities (additional 25% beyond, and per, item 1.6).

**2.4 Building Condition Assessment (Continued):** CONTRACTOR will perform a Building Condition Assessment (BCA) of the balance of all school facilities (additional 33% beyond, and per, item 1.7).

**2.5 Enrollment Evaluation and GIS (Continued):** After compiling the GIS into an overall planning tool (per item 1.8), CONTRACTOR will review Hawaii developed enrollment projections. Based on that review, the team will provide commentary on the projection process and make recommendations as applicable to refine school-by-school projections. Assuming no additional analysis is required, the relevant projections will be used as a basis for capacity and utilization calculations. GIS will be utilized in working group meetings (both District and community based), options work sessions and in development of the Facilities Master Plan recommendations.

**2.6 Capacity and Utilization:** CONTRACTOR will prepare, at the completion of the educational adequacy assessment, and in conjunction with the space inventory and room usage data, a detailed capacity and utilization analysis that includes permanent and temporary space, current and recoverable instructional classrooms, and an area adjustment for small classrooms. The capacity will be based upon a consistent formula incorporating DOE criteria and will be calculated at the school level from the database. The utilization, calculated by dividing the enrollment by the campus capacity, will then be mapped to identify under and over utilization on the islands.

**2.7 Facility Option Planning:** CONTRACTOR will develop Facility options from the data collected and input gathered from the facility condition review, educational framework work session, GIS, cost estimates and community input. Appropriate costs associated with options will also be developed based on cost estimates of the scope of work determined by condition and educational adequacy assessment. CONTRACTOR will develop options in conjunction with DOE and the steering committees before presenting them to the community. These options identify the basic scope of the renovations, replacements, additions, new construction, and closures/ consolidations, as well as macro costs. CONTRACTOR to develop an options packet to include all pertinent planning data and describes each option including basic project scope and cost.

**2.8 Community Engagement:** CONTRACTOR to assemble Community Steering Committees that will assist in the development and implementation of the Facilities Master Planning process. The Committee shall represent a broad cross-section of school and non-school members of the community. The Steering Committees will meet up to five (5) times throughout the process and will include representatives from all school districts. CONTRACTOR will engage up to seven (7) Steering Committees throughout the state to achieve a broad based coverage of community needs. CONTRACTOR will conduct a series of community dialogues to share facility options with the community. During these sessions, participants will be able to share opinions on each of the options in a small group format and develop a collective response as to preferred options. At the conclusion of the dialogue, results will be posted on wall charts and all questionnaires collected and tallied.

**Public Meeting Approach -** This effort will be developed through a series of five meetings in each complex:

- 1      The initial meeting will convey the overall process and the capacity data (Steering Committee).
- 2      The second meeting will include a presentation of underlying condition data and the facility options by complex (Steering Committee).
- 3      The third meeting will focus on individual options at each school (Steering Committee).
- 4      Then the team will hold a series of community dialogues in each complex to review options and build consensus on the preferred option at each location (Community).
- 5      Following the facility options planning, the team will focus on recommendations by school (Steering Committee).

**2.9 Economic Analysis:** Following development of facility options, CONTRACTOR will identify potential funding solutions for DOE capital programs. Funding options may

include traditional bonding, P3 and other alternative solutions. CONTRACTOR will facilitate discussions with DOE to determine which solutions are viable for DOE to pursue. It is anticipated that CONTRACTOR will document results of the discussions to provide a basis for pursuing preferred funding strategies

**2.10 Presentation and Reporting:** Upon completion of the assessment, and the entry of assessment data in M.A.P.P.S™, CONTRACTOR will develop an overall analysis of DOE facilities. Analysis will include current deficiency costs for each building and campus, a 10-year life cycle capital renewal forecast, and a FCI for each facility. The building condition assessment data will be available via reports from the M.A.P.P.S™ database with a printed report for each school. A district wide summary will be developed for presentation to the administration and/or Board of Education and in its final form shall include long range Facility Master Plan recommendations.

CONTRACTOR will prepare a written facilities pre-funding plan that includes the results and findings from the assessment, as well as the capacity analysis for district enrollment growth. This plan will be a multi-year, prioritized plan of action that sets forth the timeline and cost for meeting DOE facilities and capital improvement requirements. The plan's assessment of requirements and recommendations for action will be based on the combination of demographic analysis, enrollment projections, educational mission, and facility condition.

One hard-copy draft report per school, along with a district summary will be provided to DOE, in addition to electronic copies. Per the schedule below, DOE will have two weeks to review and comment on the draft report. CONTRACTOR will then prepare a final report over a time period of one week. The final report will be presented at Board of Education Board meeting (date to be determined).

**2.11 M.A.P.P.S™ Implementation & Training:** M.A.P.P.S™ software application will be provided to the DOE following the completion of this study with a perpetual license for ongoing use. A two-day training session for up to ten people will be conducted upon conclusion of the project. Follow-on technical support, training, RSMeans®cost updates, and maintenance may be provided at the districts option for an additional annual fee of \$ 44,200.00 per year according to the M.A.P.P.S™ Software License Agreement beginning one year after following the completion of the project.

#### **C. CONTRACTOR'S RESPONSIBILITY:**

1. To the extent required by reasonable professional standards governing licensed architects and engineers within the State of Hawaii, the CONTRACTOR shall be responsible for the professional and technical accuracy and the coordination of all services required under this agreement. Neither the State of Hawaii, Department of Education's review, approval or acceptance of, nor payment for any of the services required under this agreement shall relieve the CONTRACTOR from such responsibility. The CONTRACTOR shall be held liable for damages sustained by the STATE as a result of CONTRACTOR'S negligence, errors, omissions or breach of contract in carrying out such responsibility. In the event of a conflict within the CONTRACTOR'S RESPONSIBILITY requirements with the Indemnification provision contained the Special Conditions, Attachment-S5 to the contract, the Indemnification provision in the Special Conditions shall control.

## STATE OF HAWAII

## COMPENSATION AND PAYMENT SCHEDULE

PROJECT: **FACILITIES MASTER PLAN – SYSTEM-WIDE**For the Hawaii Department of EducationD.O.E. Job No. Q61004-13

The STATE shall compensate the CONTRACTOR in accordance with the terms and conditions of this Agreement.

- A. For Basic Services, as described in the manual entitled "Policies and Procedures Governing Design Consultant Contracts", dated November 1981, as revised, compensation shall be on the basis of a Lump Sum Fixed Fee in the amount of \$4,192,125.00. Such compensation may be paid monthly for services performed so that the compensation at the completion of each phase of service shall be the following of the Lump Sum Fixed Fee.

<u>PHASE I Planning Services</u>			<u>AMOUNT</u>
<u>1.1. Preliminary Planning</u>		\$	84,350.00
<u>1.2. Planning &amp; Policy Research</u>			219,275.00
<u>1.3. Standards Development / Educational Specifications and Guidelines</u>			194,750.00
<u>1.4. CAD Conversion &amp; Space Inventory</u>			511,375.00
<u>1.5. Pilot Assessment</u>			45,150.00
<u>1.6. Educational Adequacy Assessment</u>			505,400.00
<u>1.7. Building Condition Assessment</u>			933,500.00
<u>1.8. Enrollment Evaluation and GIS</u>			12,100.00
	SUB TOTAL	\$	2,505,900.00

<u>PHASE II Planning Services</u>			<u>AMOUNT</u>
<u>2.1. Cont. Planning &amp; Policy Research</u>		\$	140,650.00
<u>2.2. Standards Development / Educational Specifications and Guidelines</u>			21,150.00

**Attachment-S2**

<u>2.3. Cont. Educational Adequacy Assessment</u>			76,000.00
<u>2.4. Cont. Building Condition Assessment</u>			694,500.00
<u>2.5. Enrollment Evaluation and GIS</u>			33,800.00
<u>2.6. Capacity &amp; Utilization</u>			100,175.00
<u>2.7. Facility Option Planning</u>			155,850.00
<u>2.8. Community Engagement</u>			326,750.00
<u>2.9. Economic Analysis</u>			59,100.00
<u>2.10. Presentation &amp; Reporting</u>			42,550.00
<u>2.11. M.A.P.P.S™ Implementation &amp; Training</u>			35,700.00
	SUB TOTAL	\$	1,686,225.00
	GRAND TOTAL	\$	4,192,125.00

- B. For Additional Services and/or Reimbursable Expenses as described in the manual entitled, "Policies and Procedures Governing Design Consultant Contracts," dated November 1981, as revised, the total amount reserved by the STATE shall be \$422,875.00.
- C. The STATE Engineer has overall responsibility for the management of this contract as he/she knows specifically what needs to be done and completed at the end of each phase of work. If any of the scope of work criteria and requirements listed and described in the DETAILED DESCRIPTION is/are not met, then the work of that particular phase will be considered incomplete and payment will be withheld until the work is satisfactorily completed; satisfactory completion is to be determined by the STATE Engineer.
- D. This contract is subject to the availability of funds.

**STATE OF HAWAII**

**TIME SCHEDULE**

**PROJECT: FACILITIES MASTER PLAN – SYSTEM-WIDE**

**FOR THE HAWAII DEPARTMENT OF EDUCATION**

D.O.E. Job No. Q61004-13

Time is considered to be of the essence, and the CONTRACTOR shall execute the work with due efficiency and diligence to complete the work within the specified time.

The CONTRACTOR shall begin work on the contract immediately upon written notification to proceed.

The schedule of basic services for this contract is as follows:

<b><u>PHASE I</u></b>	<b><u>ESTIMATED COMPLETION DATE*</u></b>
<u>1.1 Preliminary Planning</u>	60 days after NTP
<u>1.2 Policy Research</u>	240 days after NTP
<u>1.3 Standards Development</u>	180 days after NTP
<u>1.4 CAD Development</u>	180 days after NTP
<u>1.5 Pilot Assessment</u>	120 days after NTP
<u>1.6 Educational Adequacy Survey</u>	240 days after NTP
<u>1.7 Building Condition Assessment</u>	240 days after NTP
<u>1.8 Enrollment Evaluation</u>	120 days after NTP
<b><u>PHASE II</u></b>	<b><u>ESTIMATED COMPLETION DATE *</u></b>
<u>2.1 Continued Policy Research</u>	90 days after completion of Phase I
<u>2.2 Education Specification Development</u>	60 days after completion of Phase I

## Attachment-S3

<u>2.3 Continued Educational Adequacy Survey</u>	60 days after completion of Phase I
<u>2.4 Continued Building Condition Assessment</u>	60 days after completion of Phase I
<u>2.5 Enrollment GIS Assessment</u>	60 days after completion of Phase I
<u>2.6 Capacity and Utilization</u>	120 days after completion of Phase I
<u>2.7 Facility Option Planning</u>	180 days after completion of Phase I
<u>2.8 Community Engagement</u>	240 days after completion of Phase I
<u>2.9 Economic Analysis</u>	240 days after completion of Phase I
<u>2.10 Presentation and Reporting</u>	240 days after completion of Phase I
<u>2.11 M.A.P.P.S™ Implementation &amp; Training</u>	240 days after completion of Phase I

Note: (\*) Term - The contract shall continue until issuance of the Contract Completion Notice.

In the event, during the prosecution of the work, that the CONTRACTOR finds that he cannot complete the work by the date agreed upon, the CONTRACTOR shall submit to the STATE in writing, prior to the completion date, a request for time extension, citing the reasons for requiring the additional time.

**STATE OF HAWAII**  
**SPECIAL CONDITIONS**

**GENERAL CONDITIONS**

The General Conditions (GC) for the State of Hawaii, (AG-008 Rev. 4/15/2009) and its subsequent amendments are also to be used for the implementation of Department of Education (DOE) projects. However, it is hereby understood and agreed to by and between the parties hereto to amend the GC as follows:

- A. Paragraph 7 of the General Conditions is deleted in its entirety and replaced with the paragraph below:

**Indemnification**

The CONTRACTOR shall indemnify and hold harmless the State of Hawaii, the contracting agency and their officers, employees and agents from and against all liability, loss, damage, cost, and expense, including all reasonable attorney's fees, and all claims, suits, and demands therefore, arising out of or resulting from the negligent, reckless, intentional, or wrongful acts, errors, or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

**POLICIES AND PROCEDURES GOVERNING DESIGN CONSULTANT CONTRACTS**

The Policies and Procedures Governing Design Consultant Contracts (PPGDCC) and its subsequent amendments are also to be used for the implementation of DOE projects. However, it is hereby understood and agreed to by and between the parties hereto to amend the Policies and Procedures Governing Design Consultant Contracts as follows:

A. Chapter II, General Requirements

1. Delete Paragraph II.B.1, Comptroller, Paragraph II.B.4, Department and Paragraph II.B.5, Engineer; in their entirety and replace them with the following:
  1. **Superintendent** – The Superintendent, State of Hawaii, the legally appointed head of the Department of Education (DOE), or its representative(s), designated in writing.
  4. **Department** – The Department of Education (DOE)
  5. **Engineer** – The STATE Engineer, acting for the Superintendent, either directly or through an assistant or representative.

**Attachment-S5**

All references to these names shall be changed globally throughout the PPGDCC."

B. Chapter III, Administration

1. Delete Paragraph B, The Department of Accounting and General Services (DAGS) and its Division of Public Works (DPW) in its entirety and replace with the following:

"B. The Department of Education (DOE)

All references to this name shall be changed globally throughout the PPGDCC."

## GENERAL CONDITIONS

### Table of Contents

	<u>Page(s)</u>
1. Coordination of Services by the STATE .....	2
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.....	2
3. Personnel Requirements .....	3
4. Nondiscrimination .....	3
5. Conflicts of Interest .....	3
6. Subcontracts and Assignments .....	3
7. Indemnification and Defense.....	4
8. Cost of Litigation.....	4
9. Liquidated Damages .....	4
10. STATE'S Right of Offset.....	4
11. Disputes .....	4
12. Suspension of Contract.....	4
13. Termination for Default.....	5
14. Termination for Convenience .....	6
15. Claims Based on the Agency Procurement Officer's Actions or Omissions.....	8
16. Costs and Expenses .....	8
17. Payment Procedures; Final Payment; Tax Clearance .....	9
18. Federal Funds .....	9
19. Modifications of Contract.....	9
20. Change Order.....	10
21. Price Adjustment .....	11
22. Variation in Quantity for Definite Quantity Contracts .....	11
23. Changes in Cost-Reimbursement Contract.....	11
24. Confidentiality of Material .....	12
25. Publicity .....	12
26. Ownership Rights and Copyright .....	12
27. Liens and Warranties .....	12
28. Audit of Books and Records of the CONTRACTOR.....	13
29. Cost or Pricing Data .....	13
30. Audit of Cost or Pricing Data .....	13
31. Records Retention.....	13
32. Antitrust Claims.....	13
33. Patented Articles.....	13
34. Governing Law .....	14
35. Compliance with Laws .....	14
36. Conflict between General Conditions and Procurement Rules .....	14
37. Entire Contract.....	14
38. Severability .....	14
39. Waiver .....	14
40. Pollution Control .....	14
41. Campaign Contributions .....	14
42. Confidentiality of Personal Information.....	14

## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
  - h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
  - i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.
3. Personnel Requirements.
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
  - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
    - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
    - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
    - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
  - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

- Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.
- c. **Reports.** All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
- d. **Actions affecting more than one purchasing agency.** Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. **Indemnification and Defense.** The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
8. **Cost of Litigation.** In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
9. **Liquidated Damages.** When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
10. **STATE'S Right of Offset.** The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
11. **Disputes.** Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
12. **Suspension of Contract.** The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
- a. **Order to stop performance.** The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. **Compensation.** Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. **Excuse for nonperformance or delayed performance.** The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. **Erroneous termination for default.** If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. **Additional rights and remedies.** The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. **Termination for Convenience.**

- a. **Termination.** The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. **CONTRACTOR'S obligations.** The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. **Right to goods and work product.** The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:
- (1) Any completed goods or work product; and
  - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. **Compensation.**
- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
  - (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
  - (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
    - (A) Contract prices for goods or services accepted under the Contract;
    - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
    - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
    - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
  - (5) Method of shipment or packing of supplies; or
  - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
- c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
- d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
- e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. **Audit of Books and Records of the CONTRACTOR.** The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. **Cost or Pricing Data.** Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. **Audit of Cost or Pricing Data.** When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. **Records Retention.**
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
  - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. **Antitrust Claims.** The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. **Patented Articles.** The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. **Governing Law.** The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. **Compliance with Laws.** The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. **Conflict Between General Conditions and Procurement Rules.** In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. **Entire Contract.** This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. **Severability.** In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. **Waiver.** The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. **Pollution Control.** If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. **Campaign Contributions.** The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. **Confidentiality of Personal Information.**
- a. **Definitions.**
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
- (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.